

1 HANSON BRIDGETT LLP
KURT A. FRANKLIN, SBN 172715
2 kfranklin@hansonbridgett.com
SAMANTHA WOLFF, SBN 240280
3 swolff@hansonbridgett.com
CAROLINE LEE, SBN 293297
4 clee@hansonbridgett.com
JENNIFER ANIKO FOLDVARY, SBN 292216
5 jfoldvary@hansonbridgett.com
425 Market Street, 26th Floor
6 San Francisco, California 94105
Telephone: (415) 777-3200
7 Facsimile: (415) 541-9366

8 HANSON BRIDGETT LLP
TYSON M. SHOWER, SBN 190375
9 tshower@hansonbridgett.com
LONDON D. BAILEY, SBN 240236
10 lbailey@hansonbridgett.com
500 Capitol Mall, Suite 1500
11 Sacramento, California 95814
Telephone: (916) 442-3333
12 Facsimile: (916) 442-2348

13 OTTEN LAW, PC
VICTOR OTTEN, SBN 165800
14 vic@ottenlawpc.com
KAVITA TEKCHANDANI, SBN 234873
15 kavita@ottenlawpc.com
3620 Pacific Coast Highway, #100
16 Torrance, California 90505
Telephone: (310) 378-8533
17 Facsimile: (310) 347-4225

18 Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA
19 REED, and COASTAL PROTECTION
RANGERS, INC.
20

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
23

24 CORY SPENCER, an individual;
25 DIANA MILENA REED, an
individual; and COASTAL
26 PROTECTION RANGERS, INC., a
27 California non-profit public benefit
corporation,
28

CASE NO. 2:16-cv-02129-SJO (RAOx)
**PLAINTIFFS CORY SPENCER,
DIANA MILENA REED, AND THE
COASTAL PROTECTION
RANGERS, INC.'S RESPONSE TO
DEFENDANT BLAKEMAN'S
REQUEST FOR JUDICIAL NOTICE**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs,

v.

LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
LUNADA BAY BOYS, including but
not limited to SANG LEE, BRANT
BLAKEMAN, ALAN JOHNSTON
AKA JALIAN JOHNSTON,
MICHAEL RAE PAPAYANS,
ANGELO FERRARA, FRANK
FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS
VERDES ESTATES; CHIEF OF
POLICE JEFF KEPLEY, in his
representative capacity; and DOES
1-10,

Defendants.

Judge: Hon. Otero
Date: February 21, 2017
Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

I. INTRODUCTION

Plaintiffs Cory Spencer, Diana Milena Reed, and the Coastal Protection Rangers, Inc. (Plaintiffs) submit this response to Defendant Blakeman's Request for Judicial Notice (RJN) filed in support of his opposition to Plaintiffs' motion for class certification. Defendant Blakeman's untimely, improper, and inappropriate RJN should be denied for three reasons. First, Blakeman's RJN was filed late, without any request for leave from this Court nor explanation of excusable neglect warranting the late filing. Second, Blakeman's RJN is a clear attempt to circumvent this Court's 20-page limit for opposition briefs. Indeed, Blakeman even stated in his opposition brief that he "ran out of room" on the very topic that is now the subject of his RJN. Third, Blakeman's RJN is not a simple request for judicial notice of certain documents; rather, it includes approximately one-and-one-half pages of legal argument concerning issues that are irrelevant

1 to class certification. For these reasons, Plaintiffs respectfully request that
2 this Court deny Blakeman's RJN.

3 **II. RESPONSE**

4 **A. This Court Need Not Consider Blakeman's Late-Filed RJN.**

5 Blakeman's opposition to Plaintiffs' class certification motion was due
6 on January 13, 2017. (Minute Order, Aug. 29, 2016.) Blakeman's RJN,
7 which is filed in support of his opposition, was filed on January 24, 2017 –
8 eleven days later, and four days after Plaintiffs' reply brief was filed. (See
9 Dkt. No. 210.) Blakeman did not request leave to submit his post-deadline
10 RJN by motion, nor did he specify the "excusable neglect" which prevented
11 him from timely filing the RJN. Fed. R. Civ. P. 6(b)(1)(B). Blakeman's
12 "failure to buttress [his] position" in his opposition was done at his own peril
13 and he may not now attempt to support his brief after the deadline to do so
14 has passed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 896 (1990).

15 **B. Blakeman's RJN Is An Improper Attempt To Circumvent This**
16 **Court's Page Limits For Opposition Briefs.**

17 This Court's Standing Order provides that memoranda of points and
18 authorities in support of an opposition brief may not exceed 20 pages. In his
19 opposition to Plaintiffs' class certification motion, Blakeman stated (on page
20 20 of his 21-page brief) that "[a]lthough Mr. Blakeman disputes the
21 adequacy of the class representatives and class counsel, *he has run out of*
22 *room to do so.*" (Blakeman Opp'n, Dkt. No. 190, at 20:22-23, emphasis
23 added.) Not surprisingly, the entire focus of Blakeman's RJN pertains to
24 Diana Milena Reed's adequacy as class representative. Blakeman's late-
25 filed RJN is a transparent attempt to circumvent the page limit set forth in
26 this Court's Standing Order. Further, Blakeman makes no effort to comply
27 with the Local Rules and seek permission from this Court to exceed the
28 permissible page limit. See C.D. Local R. 11-6.

1 **C. Blakeman's Assertion That Diana Reed Is An Inadequate**
2 **Class Representative Is Misplaced And Improper.**

3 Blakeman's RJN is as irrelevant as it is improper. Blakeman asks this
4 Court to take judicial notice of a civil complaint and default judgment issued
5 in a superior court case several years ago because he believes these
6 documents somehow demonstrate that Ms. Reed is an inadequate class
7 representative. (RJN at 2-3.) Blakeman acknowledges the "general rule . .
8 . that unrelated unethical or even criminal conduct" is insufficient to find
9 inadequacy, but asserts that a criminal conviction for fraud may be relevant.
10 *Id.*, quoting *Stanich v. Travelers Indem. Co.*, 259 F.R.D. 294, 314-315 (N.D.
11 Ohio 2009). Blakeman then asks this Court to take judicial notice of a
12 purported default judgment for *civil* fraud. (RJN at 2.) Blakeman's request
13 falls short, however, because a civil default judgment cannot be equated
14 with a criminal conviction, and in any event, he fails to establish relevance.

15 Whereas a criminal conviction for fraud necessarily requires evidence
16 proving guilt beyond a reasonable doubt, a civil default judgment for fraud
17 simply means that no appearance was ever made by or on behalf of the
18 defendant. See 5 Cal. Crim. Practice: Motions, Jury Instr. & Sent. § 61:4
19 (4th ed.) In this sense, the complaint and default judgment obtained by Mr.
20 Rubin do not tend to prove anything about Ms. Reed, other than the fact that
21 she did not appear in that action. Ms. Reed's deposition testimony is
22 consistent with this; indeed, she stated that she had no knowledge of the
23 lawsuit or judgment. (Decl. Wolff, Ex. A (Reed Depo., Vol. II, at 198-200).)

24 Further, "[g]enerally unsavory character or credibility problems will not
25 justify a finding of inadequacy unless related to the issues in the litigation."
26 *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998). Blakeman fails to
27 demonstrate relevance here, where the default judgment in no way relates
28 to the issues in the pending litigation. Though Blakeman implies that Ms.

1 Reed is an inadequate class representative because she failed to appear in
2 another matter, such an argument is wholly without merit. Ms. Reed has
3 actively participated in this lawsuit since its inception. Ms. Reed's
4 declaration in support of Plaintiffs' motion for class certification states that
5 she understands her duties as class representative and is actively involved
6 in the prosecution of this matter. Decl. Reed Supp. Mot. for Class Cert., Dkt.
7 No. 159-5, ¶ 43. Ms. Reed's actions support this assertion. To date, Ms.
8 Reed has reviewed and revised the draft complaint, reviewed deposition
9 transcripts, responded to 10 separate sets of discovery requests, and
10 appeared for two days of deposition while in her third trimester of pregnancy.
11 *Id.* at ¶¶ 44-46. Blakeman's suggestion that Ms. Reed is somehow
12 inadequate, despite all evidence to the contrary, must be disregarded.

13 **III. CONCLUSION**

14 Having failed to timely file his RJN or seek leave based upon
15 "excusable neglect" to do so, this Court should deny Blakeman's RJN.
16 Further, the matters which are the subject of Blakeman's request are not
17 relevant to Ms. Reed's suitability as class representative, and therefore
18 should not be considered by this Court. Accordingly, Plaintiffs respectfully
19 request that this Court deny Blakeman's RJN.

20 DATED: January 31, 2017 HANSON BRIDGETT LLP

21
22
23
24
25
26
27
28

By: /s/ Samantha D. Wolff
KURT A. FRANKLIN
SAMANTHA D. WOLFF
Attorneys for Plaintiffs
Cory Spencer, Diana Milena Reed,
and Coastal Protection Rangers, Inc.